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19 UNITED STATES OF AMERICA

20 UNITED STATES DISTRICT COURT

21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 UNITED STATES OF AMERICA,

23 No. CR 24-621 (B) -MWF-6

24 Plaintiff,

25 GOVERNMENT'S OPPOSITION TO
DEFENDANT BANKS'S MOTION TO
SUPPRESS EVIDENCE AND REQUEST FOR
A FRANKS V. DELAWARE HEARING

v.

26 DURK BANKS,

27 Defendant.

28 Hearing Date: November 18, 2025
Hearing Time: 1:30 p.m.
Location: Courtroom of the
Hon. Michael W.
Fitzgerald

29 Plaintiff United States of America, by and through its counsel
30 of record, the Acting United States Attorney for the Central District
31 of California and Assistant United States Attorneys Ian V. Yanniello,
32 Gregory W. Staples, and Daniel H. Weiner, hereby files its Opposition
33 to Defendant Banks's Motion to Suppress Evidence and Request for a
34 Franks v. Delaware Hearing. (Dkt. 259.)

This opposition is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant Banks moves to suppress evidence seized from two
3 accounts pursuant to federal search warrants: (1) the X account,
4 @lildurk (the "BANKS X Account"), and (2) the "durkiooo@icloud.com"
5 iCloud account (the "BANKS iCloud account").¹

6 As in prior filings, defendant's motion focuses on rap lyrics
7 contained in "Wonderful Wayne & Jackie Boy." Defendant does not
8 dispute that he rapped those lyrics or that his lyrics are about
9 green lighting a murder of a rival; instead, defendant asserts the
10 lyrics were written seven months before S.R.'s killing, and thus the
11 government's mere inclusion of the lyrics in a search warrant
12 affidavit amounts to a material falsity requiring a Franks hearing.
13 This argument is meritless for several reasons.

14 First, defendant has failed to identify any false statement or
15 information actually contained in the Affidavit. Apparently
16 recognizing this, defendant attempts to manufacture a
17 misrepresentation by citing to an allegation about the lyrics
18 contained in a prior (nonoperative) iteration of the indictment, see
19 Mot. at 2-3, and then asks the Court to interpose falsity within the
20 Affidavit where there is none. But other than defendant's claim the
21 warrants contain "demonstrably false statements and/or omissions,"
22 the motion is devoid of evidence or facts that show the following
23 //

24

25 ¹ As defendant notes in his motion, the affidavits filed in
26 support of the warrants are substantially similar, and thus the
27 government will generally refer to the affidavits as the "Affidavit"
28 in this filing. For Exhibit A, defendant filed a version of the
affidavit that contains a redacted footnote (Ex. A at 6 n.3). That
footnote, however, is substantially similar to footnote 3 in Exhibit
B.

1 factual allegation is anything but true:

2 In December 2022, BANKS was featured on a song called
3 "Wonderful Wayne & Jackie Boy." In the song BANKS raps that
4 "It's fucked up that I'd rather get revenge instead of
5 millions . . . Told me they got an addy (go, go). Got
6 location (go, go). Green light (go, go, go, go, go). Look
7 on the news and see your son, you screamin' 'No, no'
8 (pussy)." Notably, following S.R.'s murder on August 19,
9 [2022] bystander video captured [T.B.] screaming "No, no"
10 when he saw S.R.'s body pulled from the ESCALADE.

11 (Affidavit at ¶ 13(f).) Nothing about this allegation is false or
12 misleading. Indeed, defendant does not dispute he was featured in
13 the song or that it was released four months after S.R.'s murder;
14 defendant does not dispute his song explicitly referenced seeking
15 revenge over profits and greenlighting violence after learning the
16 location of a rival; and defendant does not dispute the lyrics are
17 similar to a publicized video of defendant's rival, T.B. screaming
18 "No, no" while watching sheriff's deputies remove S.R.'s dead body
19 from a vehicle on the day he was murdered. Nor can he. Simply put,
20 these factual allegations are true --- not false as defendant claims.

21 Defendant's "omission" theory similarly lacks merit. Citing to
22 an affidavit from a sound engineer that defendant Banks filed earlier
23 in this case,² defendant asserts the affidavit recklessly or
24 intentionally failed to state that defendant wrote his lyrics before
S.R.'s murder. But even assuming this is true, the government could

25 ² The declaration was filed approximately seven months after the
26 government obtained the warrants at issue. (Dkt. 111.) Notably,
27 defendant failed to comply with this District's local rules in filing
this motion to suppress, which requires "a declaration on behalf of
the defendant, setting forth all facts then known upon which it is
contended the motion should be granted." L.Cr.R. 12-1.1.
28 Notwithstanding defendant's lack of compliance, the government
reserves the right to cross examine any declarant in connection with
defendant's motion. L.Cr.R. 12-1.3.

1 not have purposefully or recklessly omitted a fact it did not know.³
2 And even if this standard was met (it isn't), defendant's argument
3 also fails because it hinges on the premise that his lyrics are only
4 relevant to the probable cause determination if he wrote them after
5 S.R.'s murder. Not so. Defendant's lyrics (*i.e.*, admissions) about
6 ordering a hit and seeking revenge show defendant's modus operandi
7 and corroborate CW-1's account that defendant ordered and financed
8 the Los Angeles murder as set forth in the Affidavit.⁴

9 Although the Court can deny defendant's motion on the merits, it
10 need not do so here. As discussed further below, defendant has
11 standing only to challenge the seizure of evidence from the accounts
12 that belong to him (the two accounts at issue). Because the
13 government does not intend to introduce evidence seized from those
14 accounts at trial, the government respectfully requests that the
15 Court deny the motion as moot.

16 **I. ARGUMENT**

17 **A. Defendant's Motion is Moot**

18 "The Fourth Amendment guarantees the right of people to be
19 secure in their persons, houses, papers, and effects, against

20 ³ Nor does defendant's repeated contention that the government
21 was under some duty to contact the sound engineer before using the
22 lyrics in, for example, pre-indictment federal search warrants that
23 were filed under seal. Especially in a case where, as here, a
24 defendant has already demonstrated his willingness to flee the
25 country to escape accountability, the suggestion that the government
26 was required to disclose a covert federal investigation to one of
27 defendant's close associates is flatly wrong. Defendant cites no
legal authority that the failure to contact the engineer for fear of
compromising the investigation amounts to an intentional or reckless
false statement by the agent. Cf. United States v. Miller, 753 F.3d
1475, 1477-78 (9th Cir. 1985) (agent's failure to obtain defendant's
rap sheet or learn of perjury conviction was not intentional or
reckless false statement).

1 unreasonable searches and seizures." Smith v. Maryland, 442 U.S.
2 735, 739 (1979) (cleaned up). "[T]he capacity to claim the
3 protection of the Fourth Amendment depends . . . upon whether the
4 person who claims the protection has a legitimate expectation of
5 privacy in the invaded place." Rakas v. Illinois, 439 U.S. 128, 143
6 (1990). It is well settled that a defendant does not have a
7 reasonable expectation of privacy in someone else's email and/or
8 online account. See Alderman v. United States, 394 U.S. 165, 172,
9 (1969) ("Fourth Amendment rights are personal rights which, like some
10 other constitutional rights, may not be vicariously asserted," noting
11 that "Coconspirators and codefendants have been accorded no special
12 [Fourth Amendment] standing"); United States v. Omidi, No. CR 17-
13 661(A)-DMG, 2021 WL 7629902, at *7 (C.D. Cal. Aug. 6, 2021) (Chief
14 District Judge Gee ruling that defendant "lacks standing to challenge
15 the warrant as to the three Gmail accounts that do not belong to
16 him); United States v. Lustyik, 57 F. Supp. 3d 213, 223 (S.D.N.Y.
17 2014) ("A person has no expectation of privacy in another person's
18 email account."); United States v. Nazemzadeh, No. 11-cr-5726-L, 2013
19 WL 544054, at *2 n.2 (S.D. Cal. Feb. 12, 2013) (same).
20
21 Here, the government has reviewed the evidence seized from the
22 BANKS X and iCloud Accounts, and determined that it will not seek to
23 admit in its case-in-chief any such evidence. Defendant has failed
24 to submit a declaration alleging a possessory interest in the other
25 iCloud accounts searched pursuant to the warrant at issue (nor can
26 he, because they do not belong to him), and thus defendant does not
27 have standing to challenge the search of those accounts. Defendant's
28 motion is therefore moot. United States v. Kahre, 737 F.3d 554, 565
(9th Cir. 2013) (affirming district court's determination that

defendant's motion to suppress was moot where government informed court it "was not introducing the seized evidence at trial").

B. Even if Defendant's Motion Was Not Moot, the Affidavit Contained Significant Evidence Establishing Probable Cause to Search the BANKS X Account and the BANKS iCloud Account

Although the Court need not reach the merits, the Affidavit had ample probable cause to search both of defendant's accounts.

"Probable cause . . . is not a high bar." Kaley v. United States, 571 U.S. 320, 338 (2014). Rather, probable cause is only a "fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238 (1983). Whether probable cause exists is based on the "totality of the circumstances" known to the officers. United States v. Smith, 790 F.2d 789, 792 (9th Cir. 1986). Moreover, "law enforcement may draw upon their experience and expertise in determining the existence of probable cause," United States v. Garza, 980 F.2d 546, 550 (9th Cir. 1992), and "[t]he experience of a trained law enforcement agent is entitled to consideration in determining whether there was probable cause," United States v. Arrellano-Rios, 799 F.2d 520, 523 (9th Cir. 1986).

Both search warrants authorized law enforcement to search for evidence of various offenses, including violations of Murder for Hire and Conspiracy to Commit Murder for Hire, Racketeer Influenced and Corrupt Organizations ("RICO") Conspiracy, and the Violent Crime in Aid of Racketeering ("VICAR") statute.⁵ (Motion, Ex. A at vii.)

⁵ A fundamental flaw in defendant's motion is it relies on defendant's belief that only evidence directly tying defendant to S.R.'s murder is relevant to the probable cause determination. Specifically, defendant claims that information linking defendant Banks to other violence, including a 2019 shooting and other bounties (footnote cont'd on next page)

1 Each warrant was supported by a substantially similar 35-page sworn
2 affidavit from an FBI Special Agent. (Id. at 1.) The Affidavit
3 detailed the Special Agent's 14 years of training and experience in
4 murder and other violent crime investigations. (Id. at 3-4.)

5 The Affidavit sets forth specific facts establishing that
6 Chicago-based hitmen traveled to Los Angeles to murder one of
7 defendant Banks' and OTF's rivals, and that defendant Banks ordered
8 and financed the murder plot. Among the evidence referenced in the
9 Affidavit is information provided by [REDACTED]

10 [REDACTED]
11 [REDACTED] .⁶ (Id. at 7 & n.3.) Based on
12 information from CW-1 and open-source reporting,⁷ the Affidavit
13 explains that defendant Banks placed a bounty on T.B.'s life
14

15 that defendant placed on rivals, is "irrelevant" and was included in
16 the affidavit to "portray [defendant Banks] as a violent individual
17 in an effort to prejudice the reviewing judge." (Mot. at 8.)
18 Defendant confuses the charges that were later brought in the
19 indictment (murder for hire and stalking resulting in death) with the
broader subject offenses listed in the warrant, which include
violations of the VICAR and RICO statutes. Defendant's link to other
racketeering activities, including the 2019 shooting, is directly
relevant to the probable cause analysis.

20 6 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 ⁷ Indeed, defendant's own rap music before S.R.'s murder
25 references bounty payments. See, e.g., "Gucci Mane - Rumors feat. Lil
Durk [Official Video]", available at
<https://www.youtube.com/watch?v=QVn1DGgqBNo> (emphasis added) (""I
26 don't want no niggas who you catch, **I want the one I paid for ...**
Trollin' ass, we shot your homie."). Additionally, numerous rap fans
27 posted videos, articles, and blogs discussing the alleged bounty.
See, e.g., "Lil Durk Putting A Bounty On Quando Rondo", @lamoolah,
28 available at <https://www.youtube.com/shorts/NqMsFCR6GJY> (April 4,
2024).

1 following the murder of OTF member Dayvon Bennett aka King Von. The
2 Affidavit further disclosed that CW-1 knew that defendant Banks
3 placed other monetary bounties for the murder of people with whom
4 defendant Banks was feuding, including six other individuals.

5 The Affidavit also listed significant evidence corroborating
6 CW-1's account of defendant Banks' involvement in S.R.'s murder.
7 Specifically, according to bank and flight records, an associate of
8 defendant Banks coordinated and paid for five of the co-conspirators
9 to fly to and from Southern California using a credit card linked to
10 defendant Banks and OTF. (Motion, Ex. A at 9.) [REDACTED]

11 [REDACTED]
12 [REDACTED]

13 [REDACTED] And just like the funding for the hitmen's
14 flights, records also showed that defendant Banks' credit card was
15 used to purchase the hitmen's hotel room the night before the murder.
16 (Id.)

17 To establish probable cause to search for evidence related to
18 violations of the RICO and VICAR statutes, the Affidavit also contains
19 information about OTF's structure and history of violence.
20 Specifically, based on the FBI Special Agent's review of law
21 enforcement reports, conversations with other law enforcement agents,
22 and conversations with CW-1, the Affidavit states that in addition to
23 OTF's status as a rap collective, OTF also acts as an association-in-
24 fact of individuals who engage in violence, including murder and
25 assault, at the direction of defendant Banks and to maintain their
26 status in OTF. (Id. at 7-8.) The Affidavit further stated that CW-1
27 provided information about shootings and other overt actions that OTF
28 members and associates took to commit violence on behalf of OTF.

(Id. at 8.) The Affidavit then provided a specific example of racketeering activity in which defendant Banks and other OTF members participated, specifically an Atlanta robbery-turned-shooting in which defendant Banks and Dayvon Bennett were both charged with attempted murder and participation in criminal street gang activity.⁸

Lastly, the Affidavit contained detailed opinions based on the Special Agent's training and experience regarding the behavior of those involved in murder-for-hire and/or racketeering offenses, and that evidence related to those offenses was likely to be found in the digital accounts to be searched. The Special Agent opined that digital devices and/or social media accounts often contain gang members' or racketeering associates' correspondence (including text, audio and video messages) between associates, as well as items and paraphernalia sufficient to show gang organization and membership.

(Id. at 18.) The Special Agent also opined that both hitmen and their contractors maintain materials about their intended victim in digital devices, including details/communications about the whereabouts of the victim and the motive behind the hit. (Id. at 16-

17.) Finally, the Affidavit explained that X allows users to communicate with other individuals over the platform by exchanging private messages, including photos, videos, links, and text messages.

(Id. at 27.) Likewise, the Special Agent explained that Apple's iCloud is a file hosting, storage, and sharing service that can, among other things, contain a user's text messages, photos, videos, contacts, call history, e-mails, and other documents (such as

⁸ The Affidavit discloses that those state charges were dismissed against defendant Banks following Bennett's death. (*Id.* at 8 n.4.)

1 spreadsheets), as well as backups of a user's digital devices (e.g.,
2 a cellphone that contains a user's text messages and photos).
3 (Motion, Ex. B at 28.) Taken together, the specific facts set forth
4 in the Affidavit and the FBI Special Agent's training experience
5 provide more than ample probable cause to search defendant Banks' two
6 accounts at issue. See, e.g., United States v. Ocampo, 937 F.2d 485,
7 490 (9th Cir. 1991) (requiring only a "reasonable nexus between the
8 activities supporting probable cause and the locations to be
9 searched," and that a "magistrate may rely on the conclusions of
10 experienced police officers regarding where evidence is likely to be
11 found"); United States v. Rubio, 727 F.2d 786, 793 (9th Cir. 1983)
12 (explaining for a RICO search warrant, "any evidence relevant to
13 prove any element of the RICO offense is potentially seizable,
14 including "evidence of association" and "of the existence of the
15 enterprise and evidence of the pattern of racketeering activity");
16 United States v. Pelayo, No. 21-30249, 2023 WL 4858147, at *2 (9th
17 Cir. July 31, 2023) (rejecting argument that "an iCloud account is
18 too broad a place to be searched" because the law does "not
19 require warrants to specify rooms in a house nor do we
20 require warrants to specify files on a computer"). His motion should
21 therefore be denied.⁹

22 The case cited by defendant, United States v. Grant, 682 F.3d
23 827 (9th Cir. 2012), is not on point. That case involved the search
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25 ⁹ Even if the motion were not moot, and the Court found the
26 warrants lacked probable cause, suppression would still not be
27 warranted as the government submitted a thorough and detailed
28 affidavit based on information derived from a collection of law
enforcement sources in a cross-country investigation, and executed
the facially-valid warrant issued by a federal magistrate in good
faith. See United States v. Leon, 468 U.S. 897, 907 (1984).

1 of the home belonging to the father of two gang members, one of whom
2 was believed to be connected to a murder nine months before the
3 search. Id. at 828. The court found that the affidavit provided no
4 evidence that the father had any connection to the murder at issue,
5 or that either of his sons had left the murder weapon at his home.
6 Id. at 833-34. Those facts are not analogous to the Affidavit at
7 issue in this case, which sets forth the details of the murder, the
8 defendants' travel to California to commit the murder, and defendant
9 Banks' connection the accounts to be searched. Grant is wholly
10 inapposite.

11 **II. CONCLUSION**

12 For the foregoing reasons, the government respectfully requests
13 that this Court deny defendant's motion to suppress evidence.

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